

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Chapter 7
)
CARNEGIE REALTY PARTNERS, LLC,) Case No. 07 B 21626
)
Debtor.) Honorable Eugene R. Wedoff
)
) **Hearing Date: April 27, 2010**
) **Hearing Time: 9:30 a.m.**
) **Courtroom: 744**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **April 27, 2010 at 9:30 a.m.**, or as soon thereafter as counsel may be heard, we shall appear before the Honorable Eugene R. Wedoff in Courtroom 744 of the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, or whomever may be sitting in his place and stead, and then and there present the **Trustee's Motion to Approve Settlement with Fifth Third Bank**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

BARRY A. CHATZ, not individually but as
Chapter 7 Trustee of the bankruptcy estate of
CARNEGIE REALTY PARTNERS, LLC

By: /s/ Reed A. Heiligman
One of his attorneys

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Dated: April 5, 2010

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
)	
CARNEGIE REALTY PARTNERS, LLC,)	Case No. 07 B 21626
)	
Debtor.)	Honorable Eugene R. Wedoff
)	

**TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH FIFTH THIRD BANK**

Barry A. Chatz, (the "Trustee"), not individually but as Chapter 7 Trustee of the bankruptcy estate of Carnegie Realty Partners, LLC (the "Debtor"), by his attorneys, respectfully requests that this Court enter an order, pursuant to Federal Rule of Bankruptcy Procedure 9019(a), approving the Trustee's settlement and compromise with Fifth Third Bank ("Fifth Third"), as set forth below. In support thereof, the Trustee states as follows:

1. On November 16, 2007 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court").

2. A review of the Debtor's records by the Trustee revealed that Fifth Third held Depository Account No. 9020760741 (the "Depository Account"), which account was titled to the Debtor.

3. As of the Petition Date, the Depository Account contained approximately \$205,491.61.

4. On or about March 10, 2006, the Debtor executed a Pledge Agreement granting Fifth Third a first priority security interest in the Depository Account (the "Transfer").

5. On June 15, 2009, the Trustee filed an adversary complaint against Fifth Third seeking to avoid and recover the Transfer, pursuant to 11 U.S.C. § 548(A)(1)(b), commencing

the case captioned *Barry A. Chatz, not individually but as chapter 7 trustee of the bankruptcy estate of Carnegie Realty Partners, LLC v. Fifth Third Bank*, Adversary Proceeding No. 09-00479 (the “Adversary”).

6. The Trustee and Fifth Third have elected to enter into a settlement, the terms of which are incorporated into the Settlement Agreement and Release attached hereto as **Exhibit A** (the “Settlement Agreement”).

7. Pursuant to the Settlement Agreement, Fifth Third has agreed to release \$25,000.00 from the Depository Account to the Trustee (the “Settlement Amount”) in exchange for a release of all claims and causes of action set forth in the Adversary. Fifth Third is entitled to retain the balance of the Depository Account after the Settlement Amount is paid and the Settlement Agreement is approved.

RELIEF REQUESTED

8. The Trustee seeks the entry of an order, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, approving the compromise of the Trustee’s disputes with Fifth Third as set forth herein and in the Settlement Agreement.

BASIS FOR THE RELIEF REQUESTED

9. Bankruptcy Rule 9019(a) authorizes this Court to approve the Settlement Agreement if doing so would be in the best interests of the Debtor’s estate, stating in relevant part that “on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.”

10. Compromises are favored in bankruptcy as they serve to expedite the administration of the case and reduce administrative costs. *See, e.g., Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000); *In re Martin*, 91 F.3d 389, 393 (3rd Cir. 1996) (“To minimize litigation and

expedite the administration of a bankruptcy case, '[c]ompromises are favored in bankruptcy.'") (quoting 9 *Collier on Bankruptcy*, at 9019.03[1] (15th Ed. 1993)).

11. The Court should approve the Settlement Agreement if doing so is in the best interests of the Debtor's estate. See *In re Andreuccetti*, 975 F.2d 413, 421 (7th Cir. 1992); *In re Energy Co-op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989); *In re American Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987); *In re Griffin Trading Company*, 270 B.R. 883, 903 (Bankr. N.D. Ill. 2001), *aff'd*, 270 B.R. 905 (N.D. Ill. 2001); *In re Commercial Loan Corp.*, 316 B.R. 690, 697 (Bankr. N.D. Ill. 2004).

12. In determining whether a settlement is in the best interests of the estate, the Court must compare the terms of settlement with the probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience and delay (including the possibility that disapproving the settlement will cause wasting of assets). See *American Reserve Corp.*, 841 F.2d at 161; *In re Resource Technology Corp.*, 2005 WL 43262, at * 2 (N.D. Ill. Jan. 10, 2005).

13. Although any given settlement may not provide the ideal allocation of funds from the perspective of any given litigant, the Court may "give weight to the trustee's informed judgment in considering an agreement and need not decide the numerous questions of law and fact raised by the parties." *Id.* at * 3 (internal citation omitted).

14. It is well established that a trustee's business judgment should be approved unless the proposed settlement falls beneath the lowest range of reasonable litigation outcomes. See *Energy Co-op.*, 886 F.2d at 929; *In re Artra Group, Inc.*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003); *In re Telesphere Communications, Inc.*, 229 B.R. 173, 181 (Bankr. N.D. Ill. 1999).

15. The Trustee submits that, in his business judgment, the proposed settlement with Fifth Third is fair and equitable and in the best interests of the Debtor's estate.

16. In determining to enter into the Settlement Agreement, the Trustee considered, among other things, (a) the value and possible outcomes of the litigation against Fifth Third, (b) the funds available in the Debtor's estate, and (c) the cost of continued litigation.

17. The proposed settlement is particularly advantageous in light of the ongoing cost of litigation relative to the amount at issue. In the absence of the proposed settlement, the Trustee likely would exhaust estate funds before the litigation could be brought to a successful conclusion. *See, e.g., In re Resource Technology Corp.*, 2005 WL 43262, * 3 (N.D. Ill. Jan. 10, 2005) (settlement approved, in part, in consideration of limited funds available for further litigation).

NOTICE

18. At least twenty (20) days written notice of this Motion has been served on the Debtor, Fifth Third, the Debtor's scheduled creditors, all parties who have requested notice of all pleadings filed in the Bankruptcy Case, and the Office of the United States Trustee. The Trustee believes that notice of this Motion is sufficient and requests that further notice of the Motion be waived.

WHEREFORE, Barry A. Chatz, not individually but as Chapter 7 Trustee of the bankruptcy estate of Carnegie Realty Partners, LLC, respectfully requests the entry of an order, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure:

- (i) Granting the Motion;
- (ii) Authorizing the Trustee to enter into the Settlement Agreement;
- (iii) Approving the Settlement Agreement and the terms set forth therein;
- (iv) Authorizing the Trustee to abandon the balance of the Depository Account after the Settlement Amount is paid and the Settlement Agreement is approved;
- (v) Granting Fifth Third relief from the automatic stay with respect to the Depository Account
- (vi) Approving the notice provided in connection with this Motion; and
- (vii) Granting such other and further relief as is just.

Dated: April 5, 2010

Respectfully submitted,

BARRY A. CHATZ, not individually but as
Chapter 7 Trustee for the bankruptcy estate of
CARNEGIE REALTY PARTNERS, LLC

By: /s/ Reed A. Heiligman
One of his attorneys

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CERTIFICATE OF SERVICE

I, Reed A. Heiligman, an attorney, hereby certify that on **April 5, 2010**, a true and correct copy of the foregoing **Trustee's Motion to Approve Settlement and Compromise with Fifth Third Bank** was filed electronically. Notice of the filing will be sent to all parties who are currently on the Court's Electronic Mail Notice List by operation of the Court's Electronic Filing System. In addition, copies will be served upon the parties on the attached Service List via first-class United States mail, postage prepaid.

/s/ Reed A. Heiligman

Mailing Information for Case 07-21626

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive e-mail notices for this case.

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In re Carnegie Partners, LLC
Case No. 07 B 21626

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